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January 21, 2009

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TO: SACHI A. HAMAI
Executive Officer
Board of Supervisors

Attention: Agenda Preparation

FROM: ROGER H. GRANBO
Assistant County Counsel
Law Enforcement Services Division

RE: **Margaret and David Eichenlaub v. County of Los Angeles**
United States District Court Case No. CV 06-06979

Attached is the Agenda entry for the Los Angeles County Contract Cities Liability Trust Fund Claims Board's recommendation in the above-referenced matter. Also attached are the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Report.

It is requested that this recommendation, the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Report be placed on the Board of Supervisors' agenda for February 3, 2009.

RHG:scr

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Contract Cities Liability Trust Fund Claims Board's recommendation: Authorize settlement of the matter entitled Margaret and David Eichenlaub v. County of Los Angeles, United States District Court Case No. CV 06-06979, in the amount of \$475,000 and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Sheriff Department Contract Cities Trust Fund's budget.

This lawsuit concerns allegation of excessive force and wrongful death by Sheriff's Deputies.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Margaret and David Eichenlaub v. County of Los Angeles
CASE NUMBER	CV 06-06979
COURT	United States District Court
DATE FILED	11/1/2006
COUNTY DEPARTMENT	Sheriff's Department
PROPOSED SETTLEMENT AMOUNT	\$475,000
ATTORNEY FOR PLAINTIFF	Dale Galipo
COUNTY COUNSEL ATTORNEY	Dennis M. Gonzales
NATURE OF CASE	<p>Sheriff's Deputies confronted Plaintiffs' decedent Devin Eichenlaub, as they believed he was acting suspiciously and was in possession of a weapon. Mr. Eichenlaub ran from the Deputies and a struggle ensued between the Deputies and Mr. Eichenlaub. He was eventually restrained and paramedics were called to the scene. Mr. Eichenlaub died shortly thereafter.</p> <p>The Plaintiffs claim that the Deputies used excessive force on Mr. Eichenlaub and caused his death. The Deputies claim that they used reasonable force</p>

and Mr. Eichenlaub's death was unrelated to the use of force.

Due to the risks and uncertainties of litigation, a full and final settlement of the case in the amount of \$475,000 is recommended.

PAID ATTORNEY FEES, TO DATE	\$174,309
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PAID COSTS, TO DATE	\$133,241
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Summary Corrective Action Plan



The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Date of incident/event:	<p style="text-align: center;"><u>M. and D. Eichenlaub v. County of Los Angeles, et al.</u> (Summary Corrective Action Plan #2008-013)</p> <p style="text-align: center;">Sunday, October 29, 2006; 5:30 p.m.</p>
Briefly provide a description of the incident/event:	<p>On Sunday, October 29, 2006, at approximately 5:30 p.m., two uniformed Los Angeles County sheriff's deputies assigned to Lakewood Station were engaged in routine patrol activities when they contacted Devin Eichenlaub. During the course of the contact, a physical altercation between Mr. Eichenlaub and several sheriff's deputies ensued. When Mr. Eichenlaub was finally subdued, he stopped breathing. Paramedics were summoned and performed cardiopulmonary resuscitation (CPR) on Mr. Eichenlaub. He died the following day.</p>

1. Briefly describe the root cause of the claim/lawsuit:

The deputies contacted Mr. Eichenlaub to investigate a number of residential and vehicle burglaries recently committed in the area. Mr. Eichenlaub then ran from the deputies.

One of the deputies held Mr. Eichenlaub to prevent his escape. A lengthy struggle ensued and Mr. Eichenlaub was restrained. Even after being physically restrained with handcuffs, Mr. Eichenlaub continued to struggle and kick the deputies. He was further restrained with a departmentally-approved hobble restraint device placed around his ankles. Mr. Eichenlaub's assaultive behavior was finally controlled utilizing the Total Appendage Restraint Procedure (TARP).

Pursuant to established policy, Mr. Eichenlaub was then placed on his side and paramedics were summoned.

Within several minutes of the paramedics' arrival, Mr. Eichenlaub stopped breathing. One of the deputies assisted the paramedics with cardiopulmonary resuscitation (CPR). Mr. Eichenlaub was transported to a medical facility where he was pronounced dead the following day.

Mr. Eichenlaub's parents (plaintiffs) allege their son died after he was wrongfully stopped and beaten by Los Angeles County sheriff's deputies.

County of Los Angeles
Summary Corrective Action Plan

2. Briefly describe recommended corrective actions:
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

This incident was thoroughly investigated by representatives from the Los Angeles County Sheriff's Department's Internal Affairs Bureau (IAB) and Executive Force Review Committee (EFRC). Both organizations' independent administrative review revealed no violation of established policy.

The Los Angeles County Sheriff's Department had adequate policies and procedures/protocols in effect at the time of the incident, and the Department's current training curriculum sufficiently addresses the circumstances which occurred in this incident.

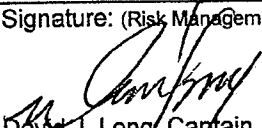
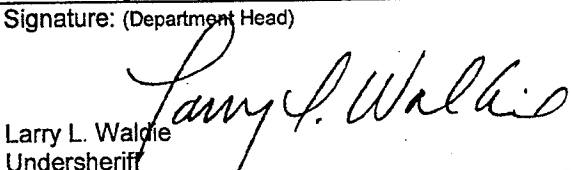
A full and final settlement at this time will avoid further litigation expenses and a potential jury verdict which *may* exceed the recommended settlement amount.

RECOMMENDED SETTLEMENT AMOUNT: \$475,500.

Adoption of this summary corrective action plan *may* have implications for other County safety departments (refer to #2 below).

3. State if the corrective actions are applicable to only your department or other County departments:
(If unsure, please contact the Chief Executive Office Risk Management Branch for assistance)

- ☐ Potentially has County-wide implications.
- ☒ Potentially has implications to other departments (i.e., all human services, all safety departments, or one or more other departments).
- ☐ Does not appear to have County-wide or other department implications.

Signature: (Risk Management Coordinator)  David J. Long, Captain Risk Management Bureau	Date: 11-25-08
Signature: (Department Head)  Larry L. Walsh Undersheriff	Date: 12/08/08

HOBBLE RESTRAINT / T.A.R.P.

Personnel may utilize a hobble restraint when necessary and in accordance with established Department procedures. Refer to section 3-01/110.21 and section 3-01/110.22 for additional information.

The only Department-approved hobble is the "Ripp Hobbler" which is made of one-inch wide polypropylene webbed belting with a tested strength of 700 pounds. The hobble has a one-inch wide steel, alligator-jawed, friction-locking clip and steel-snap swivel. The overall length of the hobble shall be a minimum of 42 inches. All other hobbles are unauthorized.

A person is considered hobbled when they are handcuffed, their ankles are held together with a "Ripp Hobbler" restraint device, and the clip end of that device is not connected to the handcuffs. The Ripp Hobbler is the only Department-approved hobble restraint device. Refer to section 3-03/270.00 for its exact specifications, and refer to section 3-01/110.22 for hobbling policies and procedures.

3-01/110.22 TOTAL APPENDAGE RESTRAINT PROCEDURE (TARP)

A Total Appendage Restraint Procedure (TARP) consists of simultaneously securing all of a person's limbs (arms and legs). The individual's arms (wrists) are immobilized with handcuffs, and their legs are immobilized with the Ripp Hobbler restraint device. The clip end of the hobble restraint is then connected to the chain on the handcuffs.

TARP and Hobbling Policy and Procedures

Because all circumstances cannot be planned for and persons under the influence of certain illicit drugs may be at higher risk of sudden cardiac arrest during extreme physical exertion and stress, the following is required in all situations when the TARP is applied. Any deviation from these procedures shall be under the most compelling of circumstances, and the reason (s) for such action shall be clearly articulated in the Force Review Package, Watch Commander's memorandum (refer to section 5-09/430.00):

- Except for Department-approved training purposes, only those personnel who have received Department-authorized training in the use of the TARP may employ it on a person,
- When possible, a Field Supervisor shall respond to the scene, prior to the TARP being applied. Otherwise, the Field Supervisor shall immediately be summoned to the scene whenever a person has been TARPed,
- A person who has been TARPed shall remain TARPed until it appears their behavior no longer poses a serious or significant threat to their own safety, the safety of others or the potential of damage to property,
- Personnel shall continuously monitor the respiratory status and level of consciousness of all persons restrained with the TARP,
- Every effort shall be made to ensure that a TARPed person either remains on their side

- (the left side is preferable) or is seated upright,
- When possible, emergency medical services personnel shall be requested to the scene, prior to the TARP being applied. Otherwise, emergency medical services personnel (e.g., paramedics, jail medical staff, etc.) shall immediately be requested to the scene whenever a person has been TARPed. This includes situations in which the person has been removed from the TARP prior to the summoning or arrival of emergency medical services personnel,
- Medical clearance for booking the TARPed person may be obtained from the emergency medical services personnel on scene, unless they recommend the TARPed person be evaluated at a medical facility. In these instances, the TARPed person shall be transported to a medical facility for a booking clearance,
- Every effort shall be made to videotape a TARPing incident including, but not limited to, the person's behavior prior to the TARPing, the actual application of the TARP and the person's position and behavior after they have been TARPed,
- If a TARPed person stops breathing, they shall be removed from the TARP and the handcuffs taken off their wrists, leaving only the legs hobbled. Cardiopulmonary Resuscitation (CPR) procedures shall immediately be started and continued until relieved by emergency medical services personnel. Sufficient back-up Deputies should be present in case the person regains consciousness and becomes violent,
- If a person must remain TARPed, they shall be transported via ambulance. Deputy personnel shall always follow the instructions of the emergency medical services personnel when securing a TARPed person for ambulance transport. A Deputy should either remain in the ambulance to provide security or, if this is not possible, follow the ambulance via radio car.

NOTE: A "hobbled" person may be transported via radio car. They shall be seated upright in the rear seat of the radio car and secured by a seat belt. The long lead of the Ripp Hobbler will be placed outside of the rear door. The rear door shall be closed and the long lead will then be placed in the adjacent front door of the radio car, leaving the lead's clip end on the front floorboard. The front door can then be closed, thus preventing the long lead from becoming entangled in the rear tire of the radio car.

Application of the TARP is considered "significant force." The hobbling technique is considered "reportable force." Refer to section 5-09/430.00 for additional information. Therefore, all force reporting procedures outlined in that section shall be followed. Additionally, if available, the following information shall be documented in the Watch Commander's memorandum (Force Review Package) for a TARPing incident:

- How long the subject was restrained in the TARP position,
- The emergency medical services agency that responded to the scene of the TARPing,
- How the subject was transported, and in what body position(s) they were placed during the transport,
- The length of time of the transport phase,
- The observations of the subject's psychological/physical condition while TARPed and during the transport phase,
- Any alleged recent drug usage by the subject or indications by them that they suffer from cardiac or respiratory diseases (e.g., asthma, bronchitis, emphysema, etc.).

[back to top](#)



LOS ANGELES COUNTY SHERIFF'S DEPARTMENT RISK MANAGEMENT BUREAU

CORRECTIVE ACTION REPORT

Corrective Action Plan (CAP) Number: 2008-013CR

Lawsuit:

Name: **M. and D. Eichenlaub v. County of Los Angeles, et al.**
Case/Docket Number: (United States District Court Central District Case Number CV06-06979)

Investigator: Richard W. Debruijn, Deputy
Risk Management Bureau
Leadership and Training Division

Incident:

Date/Time: Sunday, October 29, 2006; 5:30 p.m.

Location: Paramount Boulevard
Lakewood
(Contract City)

Station, Bureau, or Facility: Lakewood Station
(Field Operations Region III)

Risk Issues:

A public entity is responsible for the negligent acts of its employees when the acts are committed in the course and scope of employment.

Investigative Summary:

On Sunday, October 29, 2006, at approximately 5:30 p.m., two uniformed Los Angeles County sheriff's deputies assigned to Lakewood Station were engaged in routine patrol activities when they saw the plaintiffs' son, Devin Eichenlaub, walking on the center median of Paramount Boulevard.

CORRECTIVE ACTION REPORT #2008-013CR
M. AND D. EICHENLAUB V. COUNTY OF LOS ANGELES, ET AL.
PAGE TWO

Due to a number of residential and vehicle burglaries recently committed in the area, the deputies contacted Mr. Eichenlaub. Mr. Eichenlaub ran from the deputies.

One of the deputies held Mr. Eichenlaub to prevent his escape. A lengthy struggle with several deputies ensued and Mr. Eichenlaub was restrained. Even after being physically restrained with handcuffs, Mr. Eichenlaub continued to struggle and kick the deputies. He was further restrained with a departmentally-approved hobble restraint device that was placed around his ankles to prevent him from kicking. Mr. Eichenlaub's assaultive behavior was finally controlled utilizing the Total Appendage Restraint Procedure (TARP).

Pursuant to established policy, Mr. Eichenlaub was then placed on his side and paramedics were summoned.

Within several minutes of the paramedics' arrival, Mr. Eichenlaub stopped breathing. One of the deputies assisted the paramedics with cardiopulmonary resuscitation (CPR). Mr. Eichenlaub was then transported to a medical facility. He was pronounced dead the following day.

Damages:

The plaintiffs allege their son died after he was wrongfully stopped and beaten by Los Angeles County sheriff's deputies.

Administrative Review:

Was a formal Risk Management Bureau (RMB) Critical Incident Analysis (CIA) conducted?	Yes
Was a formal administrative review initiated?	Yes
If yes, was appropriate administrative action taken?	No
Was the employee's driving history analyzed during the administrative review?	N/A

Policy Issues:

The Los Angeles County Sheriff's Department had adequate policies and procedures/protocols in effect at the time of the incident.

Training/Curriculum Issues:

The Los Angeles County Sheriff's Department's current training curriculum sufficiently addresses the circumstances which occurred in this incident.

CORRECTIVE ACTION REPORT #2008-013CR
M. AND D. EICHENLAUB V. COUNTY OF LOS ANGELES, ET AL.
PAGE THREE

Corrective Action:

The Los Angeles County Sheriff's Department's formal administrative review revealed no employee misconduct on the part of the Department personnel.¹

Will a formal Risk Management Bureau audit be required?	No
If yes, what is the date the audit will be performed?	N/A
Name of person/unit performing audit?	N/A
Does this corrective action plan require notification to, or the assistance from, other County Departments?	No
If yes, what is the name, title, and organization of the person contacted?	N/A
How/when was the person contacted?	N/A

Evaluation:

It appears the sheriff's deputies had reasonable suspicion to detain Mr. Eichenlaub and used only reasonable force to detain him. There is a video which shows Mr. Eichenlaub losing consciousness. This piece of evidence will likely have a significant emotional impact on a jury.

A full and final settlement at this time will avoid further litigation costs and a potential jury verdict which *may* exceed the recommended settlement amount.

Settlement Amount: **\$475,000.00**

¹ This incident was thoroughly investigated by representatives of the Los Angeles County Sheriff's Department's Internal Affairs Bureau (IAB) and Executive Force Review Committee (EFRC). Both organizations' independent administrative review revealed no violation of established policy.

CORRECTIVE ACTION REPORT #2008-013CR
M. AND D. EICHENLAUB V. COUNTY OF LOS ANGELES, ET AL.
PAGE FOUR

Prepared: Patrick Hunter, Lieutenant *PH*
Risk Management Bureau

Submitted: David J. Long, Captain *DL*
Risk Management Bureau

Reviewed: Eric B. Smith, Commander *EB*
Leadership and Training Division

Approved: Roberta A. Abner, Chief *RAA*
Leadership and Training Division

Authorized: Larry L. Waldie, Undersheriff

Signature: *Larry L. Waldie*

Date: *12-04/08*